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 Edmund G. Brown Jr., Attorney General of the  
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ENDORSED  
 FILED  
 ALAMEDA COUNTY

SEP 23 2008

CLERK OF THE SUPERIOR COURT  
 By CHERYL CLARK  
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA *ex rel.*  
 EDMUND G. BROWN JR., Attorney General of the  
 State of California,  
  
 v.  
  
 CHILD CRAFT INDUSTRIES, INC., DELTA  
 ENTERPRISE CORP., JARDINE ENTERPRISE LTD.,  
 SOUTH SHORE INDUSTRIES, LTD., STORK  
 CRAFT MANUFACTURING, INC., and DOES 1-100,  
 Defendants.

Case No.: **RG 08411083**

**COMPLAINT**

**FOR CIVIL PENALTY AND  
 INJUNCTIVE RELIEF**

Environmental/Toxic Tort (30)  
 (Proposition 65, Health & Saf.  
 Code §§ 25249.5 *et seq.*)

The People of the State of California, by and through Edmund G. Brown Jr., Attorney  
 General, hereby allege:

**I. INTRODUCTION**

1. This complaint seeks an injunction and civil penalties to remedy defendants' failure  
 to warn consumers that certain baby furniture sold by defendants exposes consumers to  
 chemicals known to the State of California to cause cancer. Under the Safe Drinking Water  
 and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as  
 "Proposition 65," businesses must provide persons with a "clear and reasonable warning"

1 before exposing them to such chemicals.

## 2 **II. PARTIES**

3 2. Plaintiffs are the People of the State of California, by and through the Attorney  
4 General of California, Edmund G. Brown Jr. Health and Safety Code section 25249.7(c)  
5 provides that actions to enforce Proposition 65 may be brought by the Attorney General in the  
6 name of the People of the State of California. Government Code section 12607 authorizes the  
7 Attorney General to bring an action for equitable relief in the name of the People of the State  
8 of California against any person to protect the natural resources of the State from pollution,  
9 impairment, or destruction. Business and Professions Code section 17200 provides that  
10 actions to prohibit unfair and unlawful business practices may be brought by the Attorney  
11 General in the name of the People of the State of California.

12 3. Defendant Child Craft Industries, Inc. is a business entity that manufactures,  
13 distributes and/or sells baby furniture to consumers within the state of California.

14 4. Defendant Delta Enterprise Corp. is a business entity that manufactures, distributes  
15 and/or sells baby furniture to consumers within the state of California.

16 5. Defendant Jardine Enterprises Ltd. is a business entity that manufactures, distributes  
17 and/or sells baby furniture to consumers within the state of California.

18 6. Defendant South Shore Industries Ltd. is a business entity that manufactures,  
19 distributes and/or sells baby furniture to consumers within the state of California.

20 7. Defendant Stork Craft Manufacturing, Inc. is a business entity that manufactures,  
21 distributes and/or sells baby furniture to consumers within the state of California.

22 8. The true names and capacities of the defendants sued herein as Does 1 through 100  
23 are unknown to plaintiff, who therefore sues them by such fictitious names. Plaintiff will  
24 amend this complaint to allege the true names and capacities of these defendants when they  
25 have been determined. Each of the fictitiously named defendants is responsible in some  
26 manner for the conduct alleged herein.

## 27 **III. JURISDICTION AND VENUE**

28 9. This Court has jurisdiction pursuant to California Constitution Article VI, section

10, because this case is a cause not given by statute to other trial courts.

10. This Court has jurisdiction over the defendants named above because they do sufficient business in California, or otherwise have sufficient minimum contacts in California to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue is proper in this Court because the cause arises in the County of Alameda where some of the violations of law have occurred.

#### IV. STATUTORY BACKGROUND

##### A. Proposition 65

12. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as "Proposition 65" by a vote of the People in November of 1986.

13. The warning requirement of Proposition 65 is contained in Health and Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10

14. Implementing regulations promulgated by the Health and Welfare Agency provide that the warning method "must be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to the individual prior to exposure." Title 27, California Code of Regulations ("27 CCR"), § 25601(a).

15. The regulations prescribe certain types of warnings that are considered valid, including: (A) warnings on labels, (B) identification at the retail outlet through "shelf labeling, signs, menus, or a combination thereof," and (C) "a system of signs, public advertising identifying the system and toll-free information services, that provides clear and reasonable warnings." 27 CCR §§ 25601(b)(1)(A)-(C).

16. Proposition 65 also establishes a procedure by which the state is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code section 25249.8. No warning need be given concerning a listed chemical until one year after the chemical first appears on the list. *Id.*, § 25249.10(b).

1       17. Proposition 65 provides that any person "violating or threatening to violate" the  
2 statute may be enjoined in any court of competent jurisdiction. Health & Safety Code, §  
3 25249.7. To "threaten to violate" is defined to mean "to create a condition in which there is a  
4 substantial probability that a violation will occur." *Id.*, § 25249.11(e). In addition, violators  
5 are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil  
6 action. *Id.*, § 25249.7(b). Actions to enforce the law "may be brought by the Attorney  
7 General in the name of the People of the State of California or by any district attorney." *Id.*, §  
8 25249.7(c).

9       **B. The Unfair Competition Law**

10       18. California Business and Professions Code section 17200 provides that "unfair  
11 competition shall mean and include unlawful, unfair or fraudulent business practice." Section  
12 17203 of the Business and Professions Code provides that "(a)ny person performing or  
13 proposing to perform an act of unfair competition within this state may be enjoined in any  
14 court of competent jurisdiction."

15       19. Section 17206(a) provides that any person violating Section 17200 "shall be liable  
16 for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation,  
17 which shall be assessed and recovered in a civil action brought in the name of the people of the  
18 State of California by the Attorney General or by any district attorney." Under section 17205,  
19 these penalties are "cumulative to each other and to the remedies or penalties available under  
20 all other laws of this state."

21       **V. FACTS**

22       20. Formaldehyde (gas) was listed under Proposition 65 as a chemical known to the State  
23 of California to cause cancer on January 1, 1988. Title 27, Cal. Code Regs., § 27001.

24       21. Defendants manufacture, distribute and/or sell baby furniture. The baby furniture  
25 contains formaldehyde, the formaldehyde off-gases from the furniture, and people in the home  
26 breath the formaldehyde (gas). Each defendant knows that persons using the baby furniture  
27 are exposed to formaldehyde (gas). Further, based on information and belief, plaintiff alleges  
28 that each defendant has known since at least September 23, 2004 that persons using the baby

1 furniture are exposed to formaldehyde (gas).

2 22. From at least September 23, 2004 to the present, Defendants have failed to provide  
3 consumers of the baby furniture with a clear and reasonable warning that they are being  
4 exposed to chemicals known to the State of California to cause cancer.

## 5 VI. FIRST CAUSE OF ACTION

6 (For Violation of Proposition 65)

7 23. Paragraphs 1 through 22 are realleged as if fully set forth herein.

8 24. Plaintiffs are informed and believe, and based on such information and belief allege,  
9 that each Defendant employs ten or more persons.

10 25. By committing the acts alleged above, each Defendant has, in the course of doing  
11 business, knowingly and intentionally exposed individuals to formaldehyde (gas), a chemical  
12 known to the state of California to cause cancer, without first giving clear and reasonable  
13 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

14 26. Said violations render each defendant liable to plaintiff for civil penalties of up to  
15 \$2,500 per day for each violation.

## 16 VII. SECOND CAUSE OF ACTION

17 (For Unlawful Business Practices)

18 27. Paragraphs 1 through 26 are realleged as if fully set forth herein.

19 28. By committing the acts alleged above, each defendant has engaged in unlawful  
20 business practices which constitute unfair competition within the meaning of Business and  
21 Professions Code section 17200.

22 29. Said violations render each defendant liable to plaintiff for civil penalties of up to  
23 \$2,500 per day for each violation.

## 24 PRAYER FOR RELIEF

25 WHEREFORE, plaintiffs pray that the Court:

26 1. Pursuant to the First and Second Causes of Action, grant civil penalties according to  
27 proof;

28 2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions

1 Code sections 17203, enter such preliminary injunctions, permanent injunctions, or other  
2 orders prohibiting defendant from exposing persons within the State of California to  
3 formaldehyde (gas) without providing clear and reasonable warnings, as plaintiffs shall specify  
4 in further application to the court;

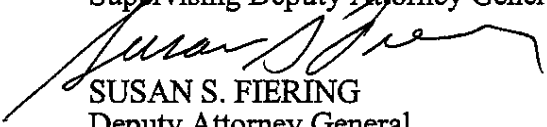
5 3. Award plaintiffs their costs of suit;

6 4. Grant such other and further relief as the court deems just and proper.

7  
8 Dated: September 23, 2008

9 Respectfully submitted,

10 EDMUND G. BROWN JR.  
11 Attorney General of the State of California  
12 KEN ALEX  
13 Senior Assistant Attorney General  
14 EDWARD G. WEIL  
15 Supervising Deputy Attorney General

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21 Attorney General

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